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In the Supreme Court
OF THE
United States

OCTOBER TERM 1973

No. 73-918

EVE PELL, BETTY SEGAL, and PAUL JACOBS,
Appellants,

vs.

RAYMOND K. PROCUNIER, Director, California Department of Corrections, et al.,
Appellees.

On Appeal from the United States District Court for the Northern District of California

MOTION TO DISMISS OR AFFIRM

Appellees, pursuant to Rule 16 of the Rules of the Supreme Court of the United States, move the Court to dismiss the above docketed appeal or, in the alternative, to affirm the order of the United States District Court for the Northern District of California which rejected appellants' claim that the practice of allowing the press to interview prison inmates selected at random violated appellants' constitutional rights,

as it is manifest that the questions raised by appellants are so unsubstantial as not to need further argument.

STATE PROVISION INVOLVED

California Department of Corrections Manual Section 415.071:

> "Press and other media interviews with specific individual inmates will not be permitted."

STATEMENT OF THE CASE

On November 8, 1971, Booker T. Hillery, an inmate at San Quentin Prison, filed a complaint for damages in the district court alleging that appellees Procunier, Nelson, and Parks were denying him an interview with the editors of Earth Magazine. A single-judge district court issued an order to show cause, and on January 13, 1972, appellees filed a return. Upon hearing on the order to show cause, counsel was appointed for Hillery.

On March 8, 1972, a first amended complaint for damages and declaratory and injunctive relief was filed. The amended complaint added as plaintiffs the appellants Eve Pell, Betty Segal, and Paul Jacobs, and three inmates, John Larry Spain, Bobby Bly and Michael Shane Guile, and added as a defendant appellee Joseph O'Brien. The new pleading alleged the original claim of Hillery, and further alleged that appellant Pell was a free-lance author who had been denied a requested interview with Spain, that appel-

lant Segal was a newspaper reporter whose request to interview Bly was disapproved, and that appellant Jacobs was a television reporter who had unsuccessfully sought permission to interview Guile.

The amended complaint sought "to prevent the administration of San Quentin State Prison from improperly denying, under color of state law, prisoners the right to private visits with specific media personnel." The amended complaint averred that as a result of the limits on such visits "the media have gained access only to that information which the prison administration decides to reveal, creating a serious infringement upon the public's right of access, through the press, to information about the prison. Such infringement is especially serious in this case, since the public is unable to obtain this information on its own."

On April 6, 1972, appellees moved to dismiss the amended complaint on the ground that it failed to state a claim upon which relief might be granted, pursuant to Federal Rule of Civil Procedure 12(b), and on the ground it failed to raise a substantial federal question. On April 10, 1972, appellee Nelson's answers to interrogatories propounded by Hillery were filed. In response to interrogatory number 3, requesting the rules and regulations regarding interviews between the media and specific inmates, appellee Nelson quoted California Department of Corrections Manual section 415.071, and appended San Quentin Institution Order No. 300 (a copy of said order is attached hereto as Appendix A). In clarifi-

cation of his responses, appellee Nelson noted "that media persons are permitted to enter the institution and interview inmates whom they happen to encounter, and who are willing to be interviewed. If a media representative desires to interview a condemned man, the selection of the inmate to be interviewed is made at random from among those inmates willing to be interviewed. If more than one condemned inmate is sought to be interviewed, the interviewer is obliged to pay the escort charges for the second and each subsequent inmate interviewed." San Quentin Institution Order No. 300 details a comprehensive plan for disseminating information to the public. (Appendix A). In particular, it designates the officer who is to arrange interviews between the media and inmates (III. B. No. 4) and sets forth the procedures to be employed in such interviews (IV. E.). In response to interrogatory number 13, asking for the rules regarding visiting privileges, appellee Nelson appended the current visiting rules (a copy of the rules is attached hereto as Appendix B). The visiting rules make it clear that a member of the general public has no right to a visit with a specifically designated inmate.

On September 29, 1972, following the submission of further points and authorities by the respective parties, the single-judge district court issued an opinion and order. The court found that section 415.071 did not violate any First Amendment rights of appellants. The court further found that interviews under the random selection method did not violate equal protection of the law. The court found, how-

ever, that section 415.071 was an unconstitutional regulation of inmates' rights of free speech, and, hence, the court concluded that the plaintiff-inmates were entitled to an order enjoining the enforcement of section 415.071. Accordingly, the order of the court declared section 415.071 invalid as a violation of the First Amendment, permanently enjoined the enforcement thereof, and directed appellees to submit a proposed new rule consistent with the opinion.

On October 4, 1972, appellees filed a motion to vacate the order alleging that the single-judge district court was without jurisdiction to enjoin enforcement of a regulation having statewide application, and appellants did not oppose the motion. On November 1, 1972, the September 29 opinion and order were set aside. However, the single-judge court issued a temporary restraining order pending adjudication before a three-judge district court.[1]

On February 14, 1973, the American Civil Liberties Union, *amicus curiae*, filed a memorandum on behalf of six members of the press. On February 23, 1973, appellees filed a memorandum in response, and attached thereto the transcript of appellee Procunier's testimony in *Washington Post Co. v. Kleindienst*, 357 F.Supp. 770, 779 (D.D.C. 1972). In the course of his testimony, appellee Procunier explained how interviews were conducted under the random selection method (the pertinent portion of the transcript is

[1]Interim regulations were promulgated by the Department of Corrections on November 6, 1972, and were approved by the single-judge court on February 8, 1973. On November 14, 1973, the three-judge court allowed the same interim procedures to remain in effect pending further order of the court.

attached hereto as Appendix C). The matter was heard before the three-judge district court on February 24, 1973, and the matter was submitted.

The opinion of August 16, 1973, sets forth the facts about which there is no significant dispute. The court found that the Department's regulation did not in practice prohibit all interviews, but allowed media representatives to enter the prison and conduct random interviews in which inmates so selected could express themselves personally. The court further recognized that the Department's regulation did not constitute a prior restraint or restriction on what the press might publish nor did it constitute an express or implied command that the press publish that which it preferred to withhold.

On the issue of the news media's alleged right to selective interviews, as distinguished from the inmates' alleged right, the district court stated:

> "The media plaintiffs herein and amicus curiae (footnote omitted) argue that § 415.071 is violative of not only the prisoners' First Amendment rights, but also the press'. The court disagrees. It has been made clear in recent decisions by the Supreme Court that the press enjoys no greater right to access to news sources than the average citizen. In *Branzburg v. Hayes,* 408 U.S. 665 (1971) the Court held that newsmen were not immune to grand jury solicitation of or information derived from the newsmen's confidential sources. While the facts of that case are substantially different than those presented here, the Court unequivocally dismissed any notion that the First Amendment bestowed upon news-

men special news-gathering privileges. Reviewing past decisions on the subject (footnote omitted) the Court observed: 'It has generally been held that the First Amendment does not guarantee the press a constitutional right of special access to information not available to the public generally.' 408 U.S. at 684. As in *Branzburg,* the present case '. . . involve[s] no intrusions upon speech or assembly, no prior restraint or restriction on what the press may publish, and no express or implied command that the press publish what it prefers to withold.' 408 U.S. at 681.

"This rationale was followed by the Ninth Circuit in the recent decision in *Seattle-Tacoma Newspaper Guild, Local No. 82 v. Parker,* [480 F.2d 1062 (1973)]. In that case media plaintiffs and prisoner intervenors challenged a regulation implemented at McNeil Island Federal Penitentiary which prohibited press interviews with willing prisoners. With respect to the First Amendment claims of the media representatives, the court held that under *Zemel v. Rusk, supra,* the '". . . . [t]he right to speak and publish does not carry with it the unrestrained right to gather information"' [480 F.2d at 1067], and that the 'disruptive influences' at McNeil 'outweigh the uncertain burden on news reporting that allegedly results from prohibiting prisoner interviews.' [480 F.2d at 1066].

"The *Seattle-Tacoma* ruling with respect to the media claims controls here. We note in passing, however, that cases cited by plaintiffs emanating from other jurisdictions apparently arriving at an opposite conclusion are distinguishable. In *Washington Post v. Kleindienst,* [357 F.Supp. 770

(D.D.C. 1972)] (footnote omitted) for example, the regulation held unconstitutional barred *all* interviews with inmates at federal penitentiaries in Connecticut and Pennsylvania. The court held that '[a] continuing flat [prohibition] against press interviews of any prisoner, at any time, in any institution, [under any circumstance,] is on its face arbitrary.' [357 F.Supp. at 773]. In that context, it is apparent the press was not being granted a *special* right of access to prisoners, but simply *some* access. Even under § 415.071 as it stood before today's ruling the press was given the freedom to enter the California institutions and interview at random, and it is the conclusion of this court that the even broader access afforded prisoners by today's ruling sufficiently protects whatever rights the press may have with respect to interviews with inmates."

Accordingly, the court granted appellees' motion for dismissal as against appellants.[2]

ARGUMENT

THE QUESTIONS RAISED BY APPELLANTS ARE SO UNSUBSTANTIAL AS NOT TO NEED FURTHER ARGUMENT.

A. The result reached by the District Court is consistent with the decisions of this Court.

As is recognized by appellants, "[t]he opinion of August 16, 1973, sets forth the facts about which

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[2]The district court concluded, however, that face-to-face interviews with media representatives are a vital element in the prisoners' rights under the First Amendment. The court found section 415.071 unconstitutional insofar as it infringed the inmates' rights and granted summary judgment in favor of the inmate-plaintiffs. This portion of the court's order is being appealed in *Procunier v. Hillery*, No. 73-754, October Term 1973.

there is no significant dispute." (Jurisdictional Statement at page 5). The district court found that "[t]he regulation does not effect an absolute ban on all media interviews with inmates. The practice under the rule is to allow media representatives to enter the prison and, aided by the Warden, select at random interviewees from the prison population (Footnote omitted). Thus, media representatives are able to interview an inmate, but unable to select a particular inmate." (*See also* Appendix A and C). A member of the general public has no absolute right to visit a specifically designated inmate. (*See* Appendix B). The district court further recognized that the Department's regulation did not constitute a prior restraint or restriction on what the press might publish nor did it constitute an express or implied command that the press publish that which it preferred to withhold. (*See also* Appendix A and C). Given these facts, it is readily apparent that the order of the district court granting appellees' motion to dismiss as to appellants is consistent with the decisions of this Court.

"It has generally been held that the First Amendment does not guarantee the press a constitutional right of special access to information not available to the public generally. (Citations omitted)" *Branzburg v. Hayes,* 408 U.S. 665, 684 (1971). "The right to speak in public does not carry with it the unrestrained right to gather information." *Zemel v. Rusk,* 381 U.S. 1, 17 (1964).

The Department of Corrections' rule does not restrict the right of the press to publish and circulate

prison news. *Compare, New York Times Co. v. United States,* 403 U.S. 713 (1971) [injunction against publication of classified material]; *Time, Inc. v. Hill,* 385 U.S. 374 (1967) [damage award on publication of crime story]; *Near v. Minnesota,* 283 U.S. 697 (1931) [statute against publication of defamatory matters]. It is not a form of registration or licensing. *Compare, Lamont v. Postmaster General,* 381 U.S. 301 (1965). The First Amendment does not protect the press in their mercenary activities and a notion that the press has some higher First Amendment right than has the public generally has been repeatedly denied. *See Red Lion Broadcasting Co. v. Federal Communications Commission,* 395 U.S. 367 (1969); *Associated Press v. United States,* 326 U.S. 1 (1944). The Department's regulation does not deny the press a right of access which the Department affords to the general public, as the general public is not afforded an absolute right to visit a specifically designated inmate. *See Zemel, supra,* 381 U.S. at 16-17.

B. The result reached by the district court is not in conflict with the decisions of other lower federal courts.

Appellants assertion that the order of the district court conflicts with other decided cases which have condemned a general and absolute bar on personal interviews between the media and inmates is a *non sequitur,* as the district court found that "[t]he regulation does not effect an absolute ban on all media interviews with inmates."

Moreover, appellants assertion that almost all the decided cases have condemned prohibitions on such

interviews is not accurate. While absolute prohibitions were invalidated in *Houston Chronicle Pub. Co. v. Kleindienst,* ..... F.Supp. ....., No. 72-H-1657, S.D. Tex., August 24, 1973, and in *Washington Post Co. v. Kleindienst,* 357 F.Supp. 770, 779 (D.D.C. 1972), *appeal pending,*[3] such prohibitions were upheld in *Mitford v. Pickett,* 363 F.Supp. 975 (E.D. Ill. 1973); *Smith v. Bounds,* ..... F.Supp. ....., Civ. 2914 (E.D. N. Car. March 14, 1972) and *Seattle-Tacoma Newspaper Guild v. Parker,* 480 F.2d 1062 (9th Cir. 1973).

In disposing of the contention that there is an absolute right to gather news, the Ninth Circuit observed:

> "We are acutely aware of the public's need for information in this area. However, we do not accept the argument that the public interest in having its prisons secure and free from disruptive influences and in the rehabilitation of prisoners is insufficient to outweigh the uncertain burden on news reporting that allegedly results from prohibiting prisoner interviews.
>
> "We have already noted that the regulation in question is rationally related to the achievement of legitimate goals of prison administration. Appellant Newspapers Guild argues that despite the wide discretion allowed administrators in the formulation of rules and regulations governing prisons, there is nonetheless an absolute right to gather news, citing *Branzburg v. Hayes,* 408 U.S. 665, 92 S.Ct. 2646, 33 L.Ed.2d 626 (1972):

---

[3]Appellants' suggestion that the facts in *Washington Post Co.* are similar to the facts of this case is belied by the repeated characterization of the policy in question as a flat prohibition on interviews. *Washington Post Co., supra,* 357 F.Supp. at 773, 774, 775.

"We do not question the significance of free speech, press or assembly to the country's welfare. Nor is it suggested that news gathering does not qualify for the First Amendment protection; without some protection for seeking out the news, freedom of the press could be eviscerated.' At 681, 92 S.Ct. at 2656.

"However, '. . . [t]he right to speak and publish does not carry with it the unrestrained right to gather information.' *Zemel v. Rusk,* 381 U.S. 1, 17, 85 S.Ct. 1271, 1281, 14 L.Ed.2d 179 (1965), and accordingly the issue we must decide is whether the interview ban unduly restricts the flow of information to the public. In concluding that it does not (footnote omitted) we again call attention to the Bureau's regulations giving news media extensive access to prison facilities and personnel, as well as the right to unlimited confidential correspondence with inmates. We are convinced that any hampering of the ability of the media to report occasioned by the interview ban is more than justified by the persuasive reasons given for its formulation." *Seattle-Tacoma Newspaper Guild, supra,* 480 F.2d at 1066-67.

The other cases cited by appellants are not on point. In *Burnham v. Oswald,* 342 F.Supp. 880, 884 (W.D.N.Y. 1972), the court was not called upon to judge the validity of a flat prohibition against interviews, but rather was asked to rule on the adequacy of guidelines which afforded a limited right for interviews. In *Mimms v. Philadelphia Newspapers, Inc.,* 352 F.Supp. 862 (E.D. Penn. 1972), the issue before the court was not the validity of a flat prohibition on interviews, but rather whether a complaint filed by

an inmate which in effect alleged a cause of action for libel and invasion of privacy stated a cause of action under the federal civil rights acts.

CONCLUSION

For the reasons stated above, the appeal should be dismissed or in the alternative, the order of the district court respecting the alleged rights of the news media should be affirmed as the questions raised by appellants are so unsubstantial as not to need further argument.

Dated, January 3, 1974.

Respectfully submitted,

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(Appendices Follow)

Appendix A

CALIFORNIA STATE PRISON
SAN QUENTIN

Institution Order No. 300

Subject: *San Quentin Public Information and Community Relations Plan*

References: Director's Rules, Chapter IV, Article I and Sections 415, 420, 421 and 422 of the Departmental Administration Manual.

General Policy: Employees must conform to all provisions of the Director's rules and of the Departmental Administrative Manual in carrying out this plan.

I. *Definitions:*

A. *Public Information* is all information supplied to the public in recognition of their right to be informed about the operations, problems, programs and goals of San Quentin and of the Department of Corrections. The term "public" includes both the broad audience reached by news media and a large group of special "publics" such as employees, inmates, business men, union members, educators, service clubs, law enforcement agencies, etc., each of whom have

particular interests in various aspects of San Quentin's program.

B. *Community Relations* is the constructive integration of San Quentin and its employees into the life of both the adjacent communities and the broader community of citizens whose interests are served by the institution and its activities. Community understanding of program objectives and their acceptance of program methods are vital to good community relations. Each employee by his works and actions has an important effect upon community understanding and acceptance of San Quentin.

II. *Objectives of the Public Information and Community Relations Program:*

A. To provide factual, unbiased information about unusual events occurring in the institution.

B. To provide balanced, objective information about the less spectacular but vital elements of the ongoing San Quentin program.

C. To elicit public understanding of and participation in the institutional program.

D. To inform the public about San Quentin Service to society in the prevention of crime through incarceration and re-socialization of offenders.

E. To educate each employee to his responsibilities for the presentation of an accurate and well-balanced picture of the institution.

III. *Organization of Public Information:*

A. The Warden of San Quentin approves and releases all public information, either personally or through specifically designated staff.

B. *The Information Officer:*

1. Releases spot news and answers press inquiries during the regular work day, informs the Warden of releases made, and consults with the Warden prior to releasing news of major occurrences.
2. Coordinates the public information program, clearing press releases developed by other staff members, and providing technical assistance to staff in developing news features.
3. Develops press releases concerning special events and on-going programs.
4. Arranges for special press interviews with staff and inmates, filming of events, etc.
5. Provides technical guidance and gives assignments to the inmate press office, with the cooperation of the Supervisor of Education.

C. *The Officer of the Day:*

1. Releases spot news and answers press inquiries during other than regular working hours.
2. Checks daily with the Warden's Office regarding possibly press inquiries and special events.

D. *Division Heads:*

1. Are responsible for the development of informative news releases concerning their areas of operation. Either complete releases or compilations of information that can be built into a release are routed to the Information officer for clearance.
2. Through staff training create an appreciation of the value of constructive news releases, and encourage their staff to develop same.
3. Are responsible to see that any unusual occurrences, acts of heroism, efforts beyond the call of duty, extraordinary achievement, etc., are referred promptly to the Information Officer for possible press release.

IV. *Policies and Procedures in the Administration of Public Information:*

A. Release of News:

1. Release of spot news by authorized personnel is made to the three newspapers maintaining regular reporters in Marin County. One call to the Marin Press Release Service will reach these papers:

The San Rafael Independent Journal
The San Francisco Examiner
The San Francisco Chronicle
United Press International
Associated Press

2. Release of feature news is made to these three papers, and to other newspapers, wire services, radio and television stations as may be desirable. Feature news releases will be approved by the Warden's Office in every instance.

B. Press contacts by employees on institutional matters is limited to authorized staff or when express permission is granted.

C. Inquiries re development of feature articles by freelance writers, magazines, press services, etc., will always be referred to the Warden's Office for review and referral for Central Office approval when necessary.

D. Interviews of employees by the press and appearance on television or radio must re-

ceive prior approval from the Warden's Office. Involvement in controversial subjects will be such that it is clear that the employee is not speaking for the institution, unless authorized to do so.

E. Interviews of inmates by news media:

1. Will be cleared through the Information Officer who will consult with the Warden in controversial or notorious cases.

Rev. 2. Require the consent of the inmate on the CDC 146. Photographing of inmates will require similar approval, although ID shots can be given upon request and without consent since they are a public record.

Rev. 3. Requires supervision appropriate to the type of case. Interviews with men on maximum custody, isolation or administrative segregation will be permitted only if no undue security hazard is present.

4. Interviews with condemned men will always be processed through the Associate Warden, Administration, and the detailed provisions of AM 415 will be followed.

Rev. 5. Inmates awaiting trial will not be interviewed until the trial is concluded.

F. Supervision of television or motion picture crews will be arranged by the Information Officer, as follows:

1. Short news and features: by the Information Officer or by custodial personnel. If the short features involves a particular area, staff from that division may be asked to supervise.
2. For filming sequences, filming agency may be asked to pay for custodial supervision.

V. *Guidelines for Dealing With News Media:*

A. The policy of San Quentin is to give the reporters all reasonable assistance in developing a story, since this aids in the mutual task of informing the public.

B. Answer all inquiries briefly, factually and objectively, without bias, personal opinions or dramatic effects. Answers should be confined to established policy and official information. Personal opinion, especially in controversial matters, should not be released as news. Evaluate statements issued as to the impression they will create if printed out of context and without explanation. Do not issue facetious, cynical or humorous statements, nor use prison jargon or slang.

C. Information released regarding inmates should be limited to objective statements in answer to specific questions from the official record: i.e., age, offense, legal status, assignment, number of disciplinary infractions, etc., privileged information such as psychiatric diagnosis, details from social or other diagnostic interviews, personal attitudes to family, etc., will not be released.

D. Never volunteer "exclusive" stories to one reporter. If a reporter, through his own initiative, develops an exclusive story or information, this "exclusive" should be honored and other reporters should not be told of this. The activities of one reporter must not be told to others.

VI. *Administration of Community Relations Program:*

A. All employees are responsible to convey objective, realistic information about San Quentin to the public on the job, in community groups and in private contacts.

B. All formal community relations programs will be approved by the Warden prior to being placed into effect. When basic policy has been approved, the staff member responsible will carry out the details of his

program, using imagination and initiative in developing information and public participation.

C. The Warden, with the assistance of the Information Officer, will coordinate the various community relations programs.

D. Tours by groups and individuals will be arranged through the Warden's Office.

E. Visits to the Adult Authority are cleared through the Classification and Parole Representative.

VII. *Methods of Encouraging Positive Community Relations:*

A. Public tours of the institution:

1. During the months of February through October, tours of mixed groups, societies, clubs, etc., of approximately 200 adults, are conducted on Saturday nights. A charge is made to cover costs of food, escort, and a contribution to the Inmate Welfare Fund. The Officer of the Day is ordinarily in charge.

2. Specific reservations are required for individuals or groups. Arrangements are made through staff designated by the Warden.

3. Tours by approved special guests will be arranged by the Warden's Office at any time during the normal working day. The Custodial Division will furnish officer escort, unless otherwise arranged; i.e., educators may be escorted by staff of the Education Department, etc. Such tours begin and end in the Warden's office, with an interview with the Warden or the Associate Warden, Administration, if possible.

B. Citizen participation in the institutional program:

1. Trade Advisory Groups working with both staff and inmate committees.
2. Academic Advisory Committee (works with staff and inmate committee).
3. Citizen volunteers (working with Alcoholics Anonymous, Speakers Clubs, athletic events, and other inmate groups).

C. Exhibitions and displays (annual Art Show, exhibits at fairs, music festivals, etc.).

D. Publications and articles:

Employees are encouraged to submit factual articles for the Correctional Review, professional journals, trade publications, etc. Such articles must be cleared through the Warden's Office for submission to Central Office.

E. Speaking Engagements:

1. Employees, if invited, and with advance notification to their supervisors, can speak to groups on the operations of the institution and the Department of Corrections.

2. Such talks or speeches should be:

   a. Objective, informative and factual. Personal opinions should be clearly identified as such.

   b. Non-partisan in controversial areas, should these arise during discussions.

/s/ L. S. Nelson, Warden

L. S. Nelson, Warden

SQ 10 #300 Dec. 27, 1966
Revised Feb. 15, 1972

Appendix B

CALIFORNIA STATE PRISON
SAN QUENTIN

November 15, 1971

Visiting Privileges

1. Receiving visits is a privilege, not a right and is subject to restriction or forfeiture if any of the following rules are violated.
2. Inmates may receive visits from ten (10) approved persons, who must be members of the family or friends of long standing. Two (2) of the ten (10) visitors will be allowed four (4) visits per month and the others, one (1) visit per month. The inmate will make this designation in writing to the Mail and Visiting Lieutenant. No person under eighteen (18) years of age may visit unless he/she is a member of the inmate's immediate family or unless accompanied by an approved visitor of the inmate who is over eighteen years of age. The visiting period will be one (1) hour in duration.
3. No one may visit unless already approved and on the visiting card. Some exceptions will be made for members of the immediate family if time permits.
4. Inmates who wish to place new visitors on their visiting card will send a completed CDC-105 form in a letter to the prospective visitor and the mail room will remove the 105 and substitute a blank

CDC-106. On completion of the 106 the prospective visitor should mail it with a letter to the inmate. The mail room staff will remove the completed 106 and forward it to the mail and visiting Lieutenant for approval. If facts don't agree, the visiting will be denied and the parties so notified. In some cases where there is doubt clarification will be requested.

5. No more than four (4) people will be allowed on the grounds to visit an inmate at one time. If there are more than four (4) in the party, the visiting hour must be divided among them.
6. Inmates may receive visits from prospective employers with the permission of the Warden or his authorized representative if the visitors are not on the approved list.
7. Visits from former inmates of any penal institutions or from persons involved in or convicted of any type of narcotics offense are prohibited, except by special permission of the Warden. A visitor who is on probation or parole must also have the permission of his supervisor to visit.
8. No male visitors wearing black or blue jeans will be permitted to visit.
9. Visitors are not permitted to leave money or any other articles at the institution for an inmate nor are they allowed to take anything from an inmate. Money must be sent in through the mail by Post Office Money and must be made payable to the Department of Corrections and must indi-

cate the register number and name of the inmate for whom intended.

10. Visiting Hours: Monday, Thursday, Friday:
8:00 a.m. to 3:00 p.m.
Saturday, Sunday & Holiday:
8:00 a.m. to 2:00 p.m.
No Visiting on Tuesday and Wednesday

11. No visits are permitted on New Year's Day because of special activities. On certain days, such as Good Friday and the days preceding Christmas and New Year's Day, the visiting room will close one (1) hour early (on week days). In the event the institution should be in a state of unrest, visiting privileges are subject to cancellation.

12. Anyone entering the institution grounds is subject to being checked through the metal detector, and whenever deemed necessary the Warden or his authorized representative may order the searching of anyone who enters the institution grounds, and persons refusing such search will be denied entrance.

13. All persons entering the institution grounds will carry valid identification in their possession. Example: A valid California State Department of Motor Vehicles Identification Card, or a Driver's License. Also fingerprinting may be requested. If a person does not possess valid identification, or if he/she refuses to be fingerprinted, he/she will be denied entrance. Out of state visitors will have their identification checked by the Mail and Visiting Lt.

14. Bringing firearms, explosives, alcoholic beverages, benzedrine or drugs on the prison grounds constitutes a felony. Visitors should be sure they do not possess any of these when entering.

15. Visitors will not be passed to the Warden's Office without prior clearance from that office. They will pass through the metal detector before being passed to the Warden's Office.

16. Visitors will not carry cameras, tape recorders, purses, bags, briefcases, or similar objects onto the prison grounds. They may take money, identification, loose cigarettes and necessary personal medication. All items carried by the visitor will be shown to the Officer at the metal detector for his inspection. If the items are difficult to search or if they fail to pass the metal detector, the visitor will be instructed to remove them from the grounds. Visitors should also avoid wearing articles of clothing or jewelry that contain metal.

17. No person will be permitted to visit with more than one (1) inmate of the California Department of Corrections unless said person is a member of the immediate family of both inmates.

18. Inmates in Segregation, Isolation, Adjustment Center or on hospital status will be allowed to receive one (1) visit per week from all sources, exclusive of Attorneys and investigators. Inmates on Isolation status will be limited to a one-half (½) hour visiting period. Exceptions will be made with the approval of the Mail and Visiting Lieutenant.

19. A member of the bar will be permitted to interview an inmate client with the consent of the inmate, during normal visiting hours, subject to institutional regulations. Recording of interviews by tape recorders or other voice recording equipment will not be permitted, nor will cameras be allowed. Investigators for an Attorney of Record will be confined to not more than two (2). Such investigators will be either a member of the Bar or a California State Licensed Investigator. Designation shall be in writing.
20. Press and other media interviews with specific individual inmates will not be permitted.

Appendix C

Washington Post Co. v. Kleindienst, 357 F.Supp. 770 (D.D.C. 1972) Hearing on Motion For Preliminary Injunction. March 23, 1972. Reporter's Transcript 118:20-121:25.

The Court: I don't want to cut Mr. Hanon (sic) off, but I am sitting here trying to find out what you did about it. What are your rules now?

The Witness: [Raymond K. Procunier] We have changed it now. The interview policy with the media is almost identical with the Federal requirements. The only change that we made is this: We will not allow an interview, a press interview or interview with the media at their request by specific name and number. We haven't changed the accessibility of the institution and talking to inmates.

The Court: So, it is more or less like the Federal policy?

The Witness: Almost identical to the Federal policy, with a few modifications. We changed from the open policy to what the Federals are doing now. We have some other changes but they are minor.

By Mr. Hannon: [Assistant United States Attorney]

Q. The significant change is that the press is no longer allowed to interview prisoners, as such?

A. The significant change is that they still interview inmates. They interview or talk with them, or any way you want to put it, but they do not do it on their own initiative with specific inmates. I can expand on that, if you want me to, to make it clear.

Q. Please do.

A. For example, just recently, because of the interest in California in the death penalty, a reporter from one of the major newspapers in the State wanted to do a story on the death penalty and he wanted to talk to some men who had had the death penalty commuted to life. Prior to that, he would have come in with several names of inmates he wanted to talk to and he would have talked to them. Now we had each warden and superintendent give us the names of four, five men who would talk to him; and we gave him the list and said: Who do you want to talk to.

The Court: In other words, you made sure he wasn't talking to a trouble-maker?

The Witness: I am sure they did. I didn't give them those instructions.

The Court: That was the general effort?

The Witness: The general effort is to minimize publicizing the trouble-makers.

The Court: Right.

The Witness: That is the general thrust of the thing.

The Court: Permitting interviews, otherwise?

The Witness: Yes.

The Court: The Federal policy is flat. You understand the Federal policy is no interviews. The Federal policy prohibits interviews without qualification.

The Witness: May I expand on this a little bit?

The Court: Yes, I want your help. You have had so much experience.

The Witness: What I heard them talking about earlier, interviews or conversations, we don't distin-

guish between the two. If an accredited reporter wants to tour San Quentin or Folsom, or some place, and in the process of the tour, as he is going around, he can hold conversations or interviews, or whatever he wants, with whatever inmates he wants to. He can't come in and say, I want to see Joe Doakes. We won't let him do that.

The Court: When he has that conversation, chat or interview, is it supervised or can he talk to him without any custodial or other person overhearing?

The Witness: That would depend on the circumstances. This decision would be made on an individual basis. If I were walking through the yard with a newspaperman and he wanted to talk to an inmate, it would depend on the inmate and the circumstances, whether I would step aside or not.

The Court: Right. On the other hand, if he is interested in a subject matter, such as the death penalty, you will permit some interviews there of selected people, not chosen necessarily by him; is that correct?

The Witness: Not specifically. Not chosen by him under any circumstances, but we allow that type of conversation or interview.

The Court: That is unsupervised?

The Witness: Yes, can be or can't be. We make that decision on an individual basis.

The Court: A wholly individual basis?

The Witness: Yes.

The Court: Now I understand. Thank you.